

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.56 OF 2002

1. Parisan s/o. Uchit Mukhia
r/o. Village Bhikaramsher
Thana, Bhabubari, Dist.Madhubarai
Bihar

2. Smt.Urmila Parisan Mukhia
Nawpada, Post Vasarwadi
Tal.: Nawapura, Dist.:Madhuraur
presently residing at
Kisan Laloo Tandel's Wadi
Kadaiya, Machiwad, Nani Daman ... Appellants

V/s.

The State of Maharashtra ... Respondent

Mr.C.M. Kothari for Appellant
Mrs.M.M. Deshmukh, APP, for Respondent-State

CORAM: S.B. MHASE &
SMT.NISHITA MHATRE, JJ.

DATED: FEBRUARY 2, 2007

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This Appeal has been preferred by the accused from the Judgment and Order of the Sessions Judge, Daman & Diu at Daman in Sessions Case No.5/2000. Accused No.1 i.e., the appellant No.1 herein has been convicted and sentenced under section 302 of the Indian Penal Code to undergo life imprisonment. A fine of Rs.5000/- has also been imposed. Accused No.1 has been convicted under section 201 r/w 34 of the Indian Penal Code as well and sentenced to suffer rigorous imprisonment for five years and payment of fine of Rs.5000/-. Accused No.2 has been acquitted of the offence under section 302 IPC but has been convicted under section 201 r/w 34 IPC and sentenced to suffer rigorous imprisonment for five years

and payment of fine of Rs.500/-.

2. The facts giving rise to the present appeal are as follows: Accused No.1 was married to Mohini, the deceased. They had three children. The family resided in Daman for a few years. Thereafter Mohini was sent back to her native place alongwith the children, while the accused No.1 continued to reside at Daman. It appears that accused No.1 married accused No.2 while his first marriage with Mohini was subsisting. Mohini was informed of this fact and she returned to Daman. The prosecution has alleged that there was a heated exchange between accused No.1 and Mohini when he threatened to do away with her if she insisted that accused No.2 should leave the house. The prosecution then alleges that during the night intervening between 16th and 17th July 2000, accused Nos.1 and 2, in furtherance of their common intention, strangled Mohini and then set her body on fire. The charred body of the victim was found at a distance of 165 feet from the chawl in which accused No.1 was residing. Accused No.1 had informed his landlord who has been examined in this case as PW2 that the victim had committed suicide. Accused No.1 also informed the victim's cousin that she was nowhere to be found. It is alleged by the prosecution that when the victim's cousin and accused No.1 searched for Mohini, they found her body near a palm tree. The victim's cousin lodged a complaint and the accused Nos.1

and 2 were arrested. The Sessions Court at Daman has held that the prosecution had proved that accused No.1 had murdered his wife Mohini. It has also found that the accused had, in furtherance of the common intention, committed the offence punishable under section 201 IPC by causing the evidence to disappear with a view to shield the accused No.1 from being convicted for murder.

3. With the assistance of the learned Advocate for the appellant, we have scrutinised the evidence on record and reappreciated it. We are of the opinion that the judgment of the Sessions Court does not suffer from any illegality or perversity and must be confirmed.

4. In order to prove its case, the prosecution had examined 7 witnesses. PW1 is the Panch witness who has spoken about the scene of offence. PW2 is the landlord of accused No.1 who claims that accused No.1 informed him that his wife had committed suicide. PW3 is the brother of PW2 and has been examined to corroborate the evidence of PW2. PW4 is the complainant who is the cousin of the deceased. PW5 and PW6 are the neighbours of accused No.1 who have been examined in order to establish the relations between the accused No.1 and his deceased wife Mohini. PW7 is the medical officer.

5. The Panchanama of the scene of offence which has been proved by PW1, discloses that two pieces of nylon

rope which were partially burnt were found near the body of the victim. A kerosene can, a matchbox were also found. Burnt pieces of the red saree worn by the victim were also seen near the body. A palm tree at the spot which was close to the body was burnt to a height of about 6 feet from the ground. The grass surrounding the body was also slinged. Pieces of the red saree worn by the victim were found stuck to the tree. PW1 has also described the condition of the room in which the accused lived. He has spoken about the chawl in which the room of the accused was situate being a three roomed chawl. The accused occupied the room in the middle which was not locked when the Panchanama was recorded. A torch which was found in the room smelt of kerosene. This was seized by the police alongwith the other articles found at the place where the body was discovered. PW2 who is the landlord of the chawl in which the accused resided has stated on oath that the accused informed him at about 6 am on 17th July, 2000 that his wife had committed suicide by setting herself ablaze. He asked his brother who has been examined as PW3 to inform the police of this fact. He claims to have seen the dead body of the victim lying near the toilet used by the residents of the chawl. PW3 has corroborated the evidence of PW2. He has spoken about informing the police on telephone about the victim's death. In his crossexamination this witness has stated that the accused No.1 informed him that his wife had died of

burns when he went to the spot of the incident.

6. The material witness relied on by the prosecution is the complainant PW4. This witness has spoken about the fact that the accused No.1 stayed in Daman while his wife and children lived at their native place, after residing with the accused for a few years. According to this witness, he was informed by the brother of accused No.1 that accused No.1 had performed a bigamous marriage and that he should ensure that Mohini and the children return to Daman. Accordingly, the complainant returned to Daman on 11.6.2000 with Mohini and her children. He states that when accused No.1 was questioned about his relationship with accused No.2, he assured PW4 and the victim that he was not going to continue his dalliance and would reside with Mohini and their children thereafter. This witness has then stated that on 7.7.2000, when he returned to the house of accused No.1 where he had left the victim, he found that accused No.2 was also present. A heated exchange occurred between the complainant and the victim on the one hand and accused No.1 on the other. Thereafter the complainant i.e., PW4 left and returned on 16.7.2000 at which point of time he found both the accused Nos.1 and 2 present in the house alongwith the victim. This witness has spoken about the threat which accused No.1 uttered when the victim insisted that accused No.2 should leave. Accused No.1 gave her the

option of either living with both the accused or refraining from holding out threats. The witness has stated that accused No.1 threatened to kill Mohini when she insisted that accused No.2 should leave the premises. The witness states that about 5.30 am the next day accused No.1 came to inform him that the victim had left the house and was not to be seen. PW4 accompanied accused No.1 to his house and searched for the victim and searched for Mohini. They found her body lying near the toilet where a can containing kerosene, one matchbox and half burnt pieces of plastic rope were also seen. This witness states he informed the landlord PW2 who came to the scene of offence alongwith his brother PW3. The evidence of this witness is believable and credible. There are no discrepancies or contradictions in his evidence.

7. PW5 is a neighbour who claims that she met the victim on 16.7.2000. She claims that Accused Nos.1 and 2 had left the children with her on the day Mohini died. This witness has denied in her crossexamination that there was any animus between the victim and the accused No.1.

8. PW6 is another neighbour who has been examined by the prosecution. However, this witness has been declared hostile and therefore, his testimony does not support the prosecution.

9. PW7 is the Medical Officer. The evidence of this witness amply proves that accused No.1 had strangled the deceased and had then set the body ablaze with the connivance of accused No.2. This witness has disclosed in his examination in chief that the body of the victim was burnt uniformly. The soles of the feet were also burnt, indicating that the feet may not have been touching the ground when the body was burnt. He has opined that the burn injuries sustained by the victim were postmortem and that she had in fact died due to asphyxia. He discounted the theory of the defence that asphyxia was caused due to noxious gases and fumes emanating from the body after it was set afire. He has opined that had the asphyxia been caused due to the victim being set on fire there would have been some soot in the windpipe, which was absent in the present case. He has stated that the victim was strangled which he had inferred from the fact that the tongue was protruding, there was haemorrhage in the white part of the eye, there was presence of serosanguinous fluid through the nostrils, etc. The witness has also stated that if a rope is normally used for strangulation, ligature marks would be found around neck, normally. However, such external marks would disappear or would not be noticed if the burn injuries are sustained postmortem. The witness has opined that the burns were specially marked over the trunk, upper

thigh and neck region. On this basis, the Doctor inferred that the death was due to strangulation. This deposition of the Doctor in no uncertain terms proves that the victim was strangled and then her body was burnt. The prosecution has thus proved that the death is homicidal and not suicidal.

10. The entire case of the prosecution is based on circumstantial evidence as there are no eye witnesses to the incident. The prosecution has been able to prove that the victim and the accused had been last seen together by the complainant, PW4 when he left their house at about 10.30 at night on 10.7.2000. From the postmortem report, the death occurred about two hours after the last meal of the victim. The complainant has stated that he left immediately after the dinner. Obviously, therefore, the time of the incident would be after 12 O'clock at night when only the accused had access to the victim. The other circumstance relied on by the prosecution is that the body was found outside the house of the accused near the toilet about 165 ft. away from the room in the chawl. The scene of offence showed that there were several articles which could have been used by the accused like the kerosene can, the matchbox, etc. to set the body alight. The burnt tree trunk of the palm tree indicates that the victim had been burnt near the tree where the kerosene can and the matchbox were found. Burnt pieces of rope were also

found in that place indicating that accused No.1 had first been strangled and then set ablaze.

11. On a perusal of the impugned judgment, we are of the view that the Sessions Court has correctly assessed the evidence on record by marshalling it properly. The appreciation of the evidence on the part of the Sessions Court is appropriate and the judgement does not contain any error of law apparent on the face of the record nor does it suffer from any perversity. In our independent assessment as well, we have reached the same conclusion. The Appeal is therefore, dismissed.

(NISHITA MHATRE, J.)

(S.B. MHASE, J.)